

TO: Interested Parties

FROM: Kellyanne Conway, President & CEO
the polling company™, inc./WomanTrend

DATE: October 13, 2010

RE: Key Findings – Statewide Survey of 600 Registered Voters in California

On behalf of The Federalist Society, the polling company™, inc./WomanTrend conducted a statewide survey of 600 registered voters in California. The survey queried voters as to their knowledge and opinions of the California Supreme Court and its decisions and rulings, as well as of the different forms of jurisprudence. Additionally, respondents were asked about their views toward immigration, marriage, eminent domain, affirmative action, and Senate judicial confirmations.

Voters Remain Unacquainted with Supreme Court of California

Since September 2008, there has been a slight (two-point) increase in the percentage of California registered voters saying that they are very or somewhat familiar with the Supreme Court of California and its rulings and decisions (from 44% to 46%), and a one-point decline in the percentage saying that they are just a little bit or not at all familiar (from 55% to 54%).

- Cohorts of voters more likely than most to be familiar with the Court and its decisions included 45-54 year olds (53%), 55-64 year olds (53%), seniors (55%), and ideological conservatives.
- While majorities of all demographic and political subgroups said they were unfamiliar with the Court, the least familiar were 18-34 year olds (63%), 35-44 year olds (66%), and ideological moderates (62%).

By 3-to-1, Californians Want Judges Who Withhold Personal Views from Rulings

When presented with the opinions of two different people regarding judicial philosophy, 75% of registered voters in California agreed, including 50% “strongly,” that ***“judges should interpret and apply the law as it is written and not take into account their own viewpoints and experiences.”*** Conversely, one-in-five (21%) felt that ***“judges should go beyond interpreting and applying the law and take into account their own viewpoints and experiences.”***

- No less than 63% of any major demographic or political subgroup said that judges should stick to interpreting and applying the law as it is written.
- Subgroups more likely than most to feel that judges should go beyond interpreting and applying the law included Blacks (35%), ideological liberals (35%), Hispanics (31%), 18-34 year olds (29%), and self-identified Democrats (28%). Still, majorities felt oppositely.

Voters Vague on the Meaning of “Judicial Restraint” and “Judicial Activism,” But Aided Definitions Elicit Support for a Limited Judiciary

Sixty percent of Californians said they are “just a little bit” (19%) or “not at all” familiar (41%) with the term “judicial activism.” Similarly, 62% were not acquainted with the term “judicial restraint” (24% “just a little bit” and 38% “not at all” familiar). When presented with the following definitions of the two concepts, voters were as positive as they were negative toward judicial activism, but were three times more positive than negative toward restraint.

“Judicial activism” is a term used to describe when a judge feels that his or her role is not simply to review the law as it is written, but is instead to allow for new or evolving meaning of the law over time. 46% Mostly Negative vs. 45% Mostly Positive

- Cohorts most positive toward “judicial activism” included 18-34 year olds (65%), liberals (65%), Hispanics (59%), and self-identified Democrats (56%).
- Conservatives (62%) Self-identified Republicans (62%), seniors (55%), and Whites (51%) were most negative toward “judicial restraint.”
- Voters who said they are familiar with the Court were much more negative than the average (55% mostly negative vs. 37% mostly positive).

“Judicial restraint” is a term used to describe when a judge views his or her role solely as an evaluator of whether a law or lower court ruling is in line with the state constitution. 67% Mostly Positive vs. 22% Mostly Negative

- With the exception of African-Americans, majorities of voters of all demographic and political subgroups were “mostly positive” toward judicial restraint.
- Standing out above the crowd as more negative than the average were Blacks (38%), seniors (29%), 55-64 year olds (29%), and men (26%).
- Voters familiar with the rulings and decisions issued by the Supreme Court of California reflected the average, with 68% mostly positive and 22% mostly negative.

Respondents were asked to select between the two types of judicial philosophy after hearing the definitions of each. By 21 points, Californians preferred that the Supreme Court of California practice judicial restraint rather than judicial activism (55%-34%). This is slightly different from the 2008 survey of California registered voters, where 58% favored restraint and 28% preferred activism.

- In 2010, majorities of men and women favored restraint, though men more so (59% vs. 51%).
- Whereas the majority of 18-34 year olds preferred activism, majorities of all other age cohorts chose restraint (56% of 35-44 year olds, 59% of 45-54 year olds, 61% of 55-64 year olds, and 60% of seniors).
- The majority of Whites (60%) and pluralities of Blacks (48%) and Hispanics (46%) supported restraint over activism.

- A plurality of self-identified Democrats (46%) and majorities of Independents (57%) and Republicans (69%) preferred restraint.

California Voters Overwhelmingly Say Eminent Domain Should Be Reserved for Public Use ONLY and Not Exercised for Economic Development Projects

By a margin of more than 7-to-1 voters favored governments utilizing eminent domain exclusively for public use projects rather than for public use and economic development projects:

<p>Person 1 believes that the power of eminent domain should apply solely to projects of public use, like schools, fire or police stations, and/or roads, and not to general economic development projects that could be for any reason, because it is not the appropriate role of the government to take one person’s private property and give it to another.</p>	<p>85% TOTAL AGREE PERSON 1 (NET) 59% STRONGLY AGREE PERSON 1 26% SOMEWHAT AGREE PERSON 1</p>
<p>Person 2 believes that the power of eminent domain should apply to projects of public use, like schools, fire or police stations, and/or roads <i>and</i> to general economic development projects that could be for any reason because the government should have the authority to take someone’s private property and give it to another if doing so will improve the local or state economy.</p>	<p>12% TOTAL AGREE PERSON 2 (NET) 5% SOMEWHAT AGREE PERSON 2 7% STRONGLY AGREE PERSON 2</p>

- No less than 75% of any major demographic subgroup agreed with Person 1 (eminent domain for public use only) and no less than 48% strongly agreed.
- Voters in greatest agreement with Person 1 included those in the Southern region of the State (91%), self-identified Republicans (91%), and Whites (90%).
- Hispanics (22%), Los Angeles/Orange County residents (17%), and self-identified Democrats (15%) stood out as more likely than the average to agree with Person 2 (eminent domain for public use and general economic development projects).

Voters Want to Have the Greatest Say on Marriage in California

When asked who should decide “who may legally marry in California,” the plurality of respondents (46%) said “we the people.” Three-in-ten assigned the responsibility to a judicial body: 18% said the responsibility should fall to the U.S. Supreme Court and 13% said it be vested in the Supreme Court of California. Receiving single-digit mention were the California State Legislature (3%), federal judges (2%), the United States Congress (1%), and the Governor of California (1%). Survey respondents – many of whom likely voted on Proposition 8 – were likely aware of the lawsuit surrounding marriage in California, if not the outcome and the judge’s opinion on the matter.

- **Pluralities of all demographic AND political subgroups assigned responsibility of deciding who may marry to the voters of California.** Cohorts more likely than the average to say **voters** should have the most influence included self-identified Republicans (63%), conservatives (62%), and those in Southern California (59%).

- Ideological liberals were more likely than conservatives to say that the **U.S. Supreme Court** should decide (22% vs. 13%). Nineteen percent of ideological moderates felt the same way.
- Voters in the Los Angeles/Orange County (19%) and San Francisco Bay (17%) areas, as well as self-identified Democrats (21%) and liberals (21%) stood out as more likely than the average to seek a ruling from the **Supreme Court of California**.

Californians Split on the Role of Feds in State Immigration Policy

After being read a description of the new Arizona immigration law (description below), voters assessed the role of the U.S. Department of Justice in the issue.

As you may know, in April of this year, Arizona signed into law the “Support Our Law Enforcement and Safe Neighborhoods Act.” This makes it a misdemeanor crime for illegal immigrants to be in Arizona without carrying the required documents. In response, the U.S. Department of Justice sued the state on the grounds that immigration regulations were exclusively vested in the federal government, not state governments. Right before the law went into effect, a U.S. District judge granted an injunction blocking most of the key portions of the law from going into effect.

In reaction, 49% of respondents said the “*the U.S. Department of Justice and the federal government [should] have stayed out and allowed Arizona to make its own laws as it sees fit.*” Conversely, but within the survey’s margin of error, 46% said “*it [was] right for the U.S. Department of Justice and the federal government to intervene in Arizona’s immigration law.*”

- There was a clear distinction across party lines, as 61% of self-identified Democrats said that the Department of Justice (DOJ) was right (and 36% said it should have stayed out) while 73% of Republicans said that the DOJ should have not involved itself (vs. 22% right to do so). Independents sided with Republicans, as 59% said the DOJ was right (vs. 36% should have stayed out).
- Men split 48%-48% between the two responses, but women favored the DOJ not involving itself by six points (50%-44%).
- By more than 2-to-1 Hispanics said that the DOJ was right to intervene (66%-31%). Blacks agreed with Hispanics, but by a narrower margin (51%-45%). The majority of Whites, on the other hand, thought it should let Arizona make its own policies (56%-38%).
- Voters in Southern California favored non-intervention on the part of Washington by a 61%-36% margin. Those in Los Angeles backed the efforts of the DOJ by a 53%-41% margin while so too did those in the San Francisco Bay Area (and by 52%-44%).

Survey Respondents Endorse Court’s Decision to Uphold Ban on Affirmative Action

Agreement outpaced disagreement by 20 points with the Court’s decision to uphold popular will as expressed in passage of Proposition 209 (57%-37%) in 1996. Not only did a majority agree, but the plurality (33%) *strongly* agreed. The following explanation of the case was shared:

In 1996, a majority of voters in California passed Proposition 209, which QUOTE “Prohibits the state, local governments, districts, public universities, colleges, and schools, and other government instrumentalities from discriminating against or giving preferential treatment to any individual or group in public employment, public education, or public contracting on the basis of race, sex, color, ethnicity, or national origin.” END QUOTE The Supreme Court of California recently upheld this ban as constitutional when a San Francisco law giving preference to women- and minority-owned businesses in city contracts was challenged.

- While agreement was twice that of disagreement among Whites (65% agree vs. 28% disagree), Blacks overwhelming disagreed (38% agree vs. 60% disagree) and a majority of Hispanics disagreed, but by a smaller margin (45% agree vs. 51% disagree).
- Despite the racial disparities in agreement, majorities of self-identified Democrats (53%), Independents (62%), and Republicans (65%) aligned in agreement.
- Statistically-similar percentages of men and women agreed (58% and 57%, respectively).
- Joining the majority of voters who earlier favored the Court exude judicial restraint was the plurality of those who favored the Court practice judicial activism (64% and 49%, respectively).

In Upcoming Senate Election, Voters Looking for Candidate Who Will Confirm Judges and Justices Who Stick to Evaluating the Constitutionality of Laws and Exclude Personal Viewpoints from Rulings

Voters were reminded that United States Senators are responsible for voting in judicial confirmation elections. In two separate questions voters suggested that their preference for a restrained judiciary at the state level carried to the federal level.

Fifty-three percent of Californians said that they would prefer their United States Senator vote to confirm Justices and Judges who *“believe that their role as judges is solely to evaluate whether a law or lower court ruling is in line with the U.S. Constitution.”* Conversely, **39%** said they would rather their U.S. Senator vote for Justices and Judges those who *“believe that their role as judges is not simply to review the law as it is written, but is instead to allow for new or evolving meaning of the law over time.”*

- Self-identified Democrats and Independents were evenly divided while Republicans favored their Senator supporting Justices and Judges who limit their spheres of influence:
 - Democrats: 46% believe that there should be room for interpretation vs. 45% believe that their role is solely to evaluate;
 - Independents: 47% believe that there should be room for interpretation vs. 46% believe that their role is solely to evaluate; and
 - Republicans: 27% believe that there should be room for interpretation vs. 70% believe that their role is solely to evaluate.
- Fifty-two percent of men and 55% of women hoped their Senator would seat to the bench judges who only evaluate the constitutionality of the law or lower court rulings.
- Majorities of Whites (55%), Blacks (55%), and Hispanics (51%) also preferred their Senator supports judges and justices who limit their responsibilities to assessing the constitutionality of laws.

Separately, **67%** of voters said that they would rather their U.S. Senator vote to confirm Judges and Justices who “*will interpret and apply the law as it is written and not take into account their own viewpoints and experiences*” while **25%** favored the appointment to the bench those who “*will go beyond interpreting and applying the law and take into account their own viewpoints and experiences.*”

- Majorities of voters of all demographic and political divisions favored the confirmation of Judges and Justices who exclude personal viewpoints and experiences from rulings. This was especially true among Whites (73%), Central Californians (75%), 35-44 year olds (76%), conservatives (77%), and self-identified Republicans (83%)
- Those more likely than the average to support their Senator confirming Judges and Justices who go beyond interpreting and applying the law included 18-34 year olds (38%), Hispanics (37%), liberals (37%), Los Angeles/Orange County residents (34%), and self-identified Democrats (32%).

METHODOLOGY

On behalf of **The Federalist Society, the polling company™, inc./WomanTrend** conducted a statewide telephone survey of 600 registered voters in California.

Interviews were conducted October 4-7, 2010 at a Computer-Assisted Telephone Interviewing (CATI) facility using live callers. The sample was drawn using a list of registered voters in California. Respondents were then screened to ensure that they were registered to vote. Sampling controls were employed to ensure representative and proportional numbers of respondents were interviewed by demographic characteristics such as age, gender, race, and geographic region, as those characteristics are reported by the latest publicly available voter registration figures from the State of California and U.S. Census data.

The margin of error for the survey is + 4.0% at a 95% confidence interval, meaning that in 19 out of 20 cases, the data obtained would not differ by any more than 4.0 percentage points in either direction had the entire population of likely voters in California been surveyed. Margins of error for subgroups are higher.

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